

## **Assembly Bill No. 687**

### **CHAPTER 462**

An act to amend Sections 7663, 7664, 7666, 7667, 9003, and 9102 of, and to add Sections 7913, 8601.5, 8704.5, and 9213 to, the Family Code, relating to adoption.

[Approved by Governor October 4, 2011. Filed with  
Secretary of State October 4, 2011.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 687, Fletcher. Adoption.

(1) Existing law, the Uniform Parentage Act, among other provisions, provides for the termination of parental rights in adoption proceedings. Existing law requires an inquiry of the mother and any other appropriate person in an effort to identify the natural father of a child, and requires notice of proceedings relating to adoption and the termination of parental rights to be given to an alleged father in accordance with specified provisions of law.

This bill would revise and consolidate those provisions. The bill would authorize a court to issue an order of adoption and cause it to apply to an earlier date if it would serve public policy and the best interests of the adoptee, subject to certain requirements.

(2) The Interstate Compact on the Placement of Children, which has been adopted in this state, authorizes and governs the interstate placement of children.

This bill would delegate certain authority to a licensed private adoption agency that has provided adoption-related services to a birth parent or prospective adoptive parent, including the authority to determine whether the placement shall be made pursuant to the Interstate Compact on the Placement of Children.

(3) Existing law requires the written consent of the parent or parents of a child to be filed prior to the time the adoption request is filed, and requires the written consent to be witnessed by certain persons.

This bill would allow the written consent to be filed simultaneously with the adoption request and would also authorize a representative of a licensed adoption agency to serve as a witness.

(4) Existing law provides for the licensure and certification of family day care homes and foster family agencies that provide foster care services.

This bill would provide that a foster care license or certification would not be required for placement, for up to 30 days, of a nondependent child who is relinquished for adoption to a licensed private adoption agency if the child is placed in the care of a prospective adoptive parent who meets specified criteria.

(5) Existing law requires an action or proceeding to vacate, set aside, or otherwise nullify an order of adoption based on fraud to be commenced within 3 years after entry of the order.

This bill would instead require that the action or proceeding be commenced within 3 years after entry of the order or within 90 days of discovery of the fraud, whichever is earlier, except under certain circumstances.

(6) Existing law governs the procedure for adult adoption, and authorizes a prospective parent and the proposed adoptee to file a petition for approval of an adoption agreement with the court in specified counties.

This bill would specify the counties in which residents and nonresidents of the state may file a petition for adult adoption with the court.

*The people of the State of California do enact as follows:*

SECTION 1. Section 7663 of the Family Code is amended to read:

7663. (a) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person by one of the following:

(1) The State Department of Social Services.

(2) A licensed county adoption agency.

(3) The licensed adoption agency to which the child is to be relinquished.

(4) In the case of a stepparent adoption, at the option of the board of supervisors, a licensed county adoption agency, the county department designated by the board of supervisors to administer the public social services program, or the county probation department.

(b) The inquiry shall include all of the following:

(1) Whether the mother was married at the time of conception of the child or at any time thereafter.

(2) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(3) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(4) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(5) The names and whereabouts, if known, of every man presumed or alleged to be the father of the child, and the efforts made to give notice of the proposed adoption to each man identified.

(c) The agency that completes the inquiry shall file a written report of the findings with the court.

SEC. 2. Section 7664 of the Family Code is amended to read:

7664. (a) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, notice of the proceeding shall be given in accordance with Section 7666. If any alleged natural father fails to appear or, if appearing, fails to

claim parental rights, his parental rights with reference to the child shall be terminated.

(b) If the natural father or a man representing himself to be the natural father claims parental rights, the court shall determine if he is the father. The court shall then determine if it is in the best interest of the child that the father retain his parental rights, or that an adoption of the child be allowed to proceed. The court, in making that determination, may consider all relevant evidence, including the efforts made by the father to obtain custody, the age and prior placement of the child, and the effects of a change of placement on the child.

(c) If the court finds that it is in the best interest of the child that the father should be allowed to retain his parental rights, the court shall order that his consent is necessary for an adoption. If the court finds that the man claiming parental rights is not the father, or that if he is the father it is in the child's best interest that an adoption be allowed to proceed, the court shall order that the consent of that man is not required for an adoption. This finding terminates all parental rights and responsibilities with respect to the child.

SEC. 3. Section 7666 of the Family Code is amended to read:

7666. (a) Except as provided in subdivision (b), notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in accordance with the Code of Civil Procedure for the service of process in a civil action in this state at least 10 days before the date of the proceeding, except that publication or posting of the notice of the proceeding is not required. Proof of giving the notice shall be filed with the court before the petition is heard.

(b) Notice to a man identified as or alleged to be the natural father shall not be required, and the court shall issue an order dispensing with notice to him, under any of the following circumstances:

(1) The man's relationship to the child has been previously terminated or determined not to exist by a court.

(2) The alleged or presumed natural father has executed a written form to waive notice, deny his paternity, relinquish the child for adoption, or consent to the adoption of the child.

(3) The whereabouts or identity of the alleged natural father are unknown or cannot be ascertained.

(4) The alleged father has been served with written notice of his alleged paternity and the proposed adoption, and he has failed to bring an action pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

SEC. 4. Section 7667 of the Family Code is amended to read:

7667. (a) Notwithstanding any other provision of law, an action to terminate the parental rights of a father of a child as specified in this part shall be set for hearing not more than 45 days after filing of the petition, except as provided in subdivision (c).

(b) The matter so set shall have precedence over all other civil matters on the date set for trial, except an action to terminate parental rights pursuant to Part 4 (commencing with Section 7800).

(c) The court may dispense with a hearing and issue an ex parte order terminating parental rights if any of the following apply:

(1) The identity or whereabouts of the father are unknown.

(2) The alleged father has validly executed a waiver of the right to notice or a denial of paternity.

(3) The alleged father has been served with written notice of his alleged paternity and the proposed adoption, and he has failed to bring an action pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

SEC. 5. Section 7913 is added to the Family Code, to read:

7913. (a) When a full service licensed private adoption agency has provided adoption-related services to a birth parent or prospective adoptive parent, that agency is delegated the authority to determine whether the placement shall or shall not be made pursuant to the Interstate Compact on the Placement of Children, and to sign the compact forms documenting that determination and date of placement.

(b) For children entering California in independent adoptions, prior to making a determination regarding placement and as soon as feasible, the private adoption agency shall notify the appropriate district office or delegated county adoption agency of the matter and verify that the preplacement interview of the prospective adoptive parent or parents has been completed.

(c) This section shall not apply to a child who is a dependent of the court or a child subject to a petition filed under Section 300 of the Welfare and Institutions Code.

SEC. 6. Section 8601.5 is added to the Family Code, to read:

8601.5. (a) A court may issue an order of adoption and declare that it shall be entered nunc pro tunc when it will serve public policy and the best interests of the child, such as cases where adoption finalization has been delayed beyond the child's 18th birthday due to factors beyond the control of the prospective adoptive family and the proposed adoptee.

(b) The request for nunc pro tunc entry of the order shall be stated in the adoption request or an amendment thereto, and shall set forth specific facts in support thereof.

(c) To the extent that a child's eligibility for any publicly funded benefit program is or could be altered by the entry of an order of adoption, the change in eligibility shall not be determined as of the nunc pro tunc date, but shall be determined as of the date of the adoption finalization hearing.

(d) The nunc pro tunc date shall not precede the date upon which the parental rights of the birth parent or parents were initially terminated, whether voluntarily or involuntarily.

SEC. 7. Section 8704.5 is added to the Family Code, to read:

8704.5. (a) A foster care license or certification shall not be required for placement of a nondependent child who is relinquished for adoption to

a licensed private adoption agency, if the child is placed in the care of prospective adoptive parents who have an approved adoption home study that meets the criteria established by the department for home studies conducted within the state.

(b) A placement made pursuant to subdivision (a) shall not exceed 30 days. If an adoptive placement or application for foster care licensure or certification does not occur within the 30 days, the licensed private adoption agency shall place the child in a home that is licensed or certified for foster care unless the prospective adoptive parent or parents are appointed by the court as the legal guardian or guardians of the child.

(c) During a placement made pursuant to subdivision (a), the licensed private adoption agency shall conduct in-home supervisory visits no less than once every 30 days.

SEC. 8. Section 9003 of the Family Code is amended to read:

9003. (a) In a stepparent adoption, the consent of either or both birth parents shall be signed in the presence of a notary public, court clerk, probation officer, qualified court investigator, authorized representative of a licensed adoption agency, or county welfare department staff member of any county of this state. The petitioner, petitioner's counsel, or person before whom the consent is signed shall immediately file the consent with the clerk of the court where the adoption request is filed. If the request has not been filed at the time the consent has been signed, the consent shall be filed simultaneously with the adoption request. Upon filing of the adoption request, the clerk shall immediately notify the probation officer or, at the option of the board of supervisors, the county welfare department of that county.

(b) If the birth parent of a child to be adopted is outside this state at the time of signing the consent, the consent may be signed before an authorized representative of an adoption agency licensed in the state or country where the consent is being signed, a notary, or other person authorized to perform notarial acts.

(c) The consent, when reciting that the person giving it is entitled to sole custody of the child and when acknowledged before any authorized witness specified in subdivision (a), is prima facie evidence of the right of the person signing the consent to the sole custody of the child and that person's sole right to consent.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of the minority.

SEC. 9. Section 9102 of the Family Code is amended to read:

9102. (a) Except as provided in Section 9100, an action or proceeding of any kind to vacate, set aside, or otherwise nullify an order of adoption on any ground, except fraud, shall be commenced within one year after entry of the order.

(b) Except as provided in Section 9100, an action or proceeding of any kind to vacate, set aside, or nullify an order of adoption, based on fraud,

shall be commenced within three years after entry of the order, or within 90 days of discovery of the fraud, whichever is earlier.

(c) In any action to set aside an order of adoption pursuant to this section or Section 9100, the court shall first determine whether the facts presented are legally sufficient to set aside the order of adoption. If the facts are not legally sufficient, the petition shall be denied. If the facts are legally sufficient, the court's final ruling on the matter shall take into consideration the best interests of the child, in conjunction with all other factors required by law.

(d) The department shall not be required under any circumstances to investigate a petition filed pursuant to this section or to represent a child who is the subject of a proceeding under this section.

SEC. 10. Section 9213 is added to the Family Code, to read:

9213. (a) Notwithstanding Section 9321, a person who is a resident of this state may file a petition for adult adoption with the court in any of the following:

- (1) The county in which the prospective adoptive parent resides.
- (2) The county in which the proposed adoptee was born or resides at the time the petition was filed.
- (3) The county in which an office of the public or private agency that placed the proposed adoptee for foster care or adoption as a minor or dependent child is located.

(b) A petitioner who is not a resident of this state may file a petition for adult adoption with the court in a county specified in paragraph (3) of subdivision (a).